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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

ADMINISTRATIVE ORDER

2004 NOV -8 AM 11:48

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF CHS Incorporated U.S. 6 Diesel Spill

Docket Number: CWA-08-2005-0002

Proceedings under Section 311 (c) of the Clean Water Act (CWA), 33 U.S.C. § 1321 (c), as amended by the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2701 et seq.

I. DEFINITIONS

"Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil (Section 311(a)(1) of the CWA, 33U.S.C. §1321(a)(1)).

"Hazardous substance" means any substance designated pursuant to subsection (b)(2) of this section (Section 311(a)(14) of the CWA, 33 U.S.C. § 1321(a)(14)).

"Navigable water of the United States" means the waters of the United States, including the territorial seas (Section 502(7) of the CWA, 33 U.S.C. § 1362(7)).

"Facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States other than submerged land (Section 311(a)(10) of the CWA, 33U.S.C. §1321(a)(10)).

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of CWA, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of CWA, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of CWA which are caused by events occurring within the scope of relevant operating or treatment systems (Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2)).

II. FINDINGS OF FACT AND VIOLATIONS

A. This Order is being issued under §311(c) of the Clean Water Act, 33 U.S.C. §1321 for a discharge or a substantial threat of discharge of oil and/or a hazardous substance into waters of the United States.

B. On or about November 5, 2004, a discharge or a substantial threat of a discharge of 5000 gallons of oil and/or diesel fuel, which is/are hazardous substance(s), reached or may reach

the North Fork of the Snake River which is a navigable water of the United States. This discharge or substantial threat of a discharge from the CHS incorporated tanker on November 5, 2004 at approximately 0804 hours and the resulting surface and subsurface diesel fuel contamination on Highway 6 above and at Arapahoe Basin Ski area on U.S. Forest Service land, Summit County, Colorado (the "facility") constitutes a substantial threat to the public health or welfare.

C. Respondent: CHS Incorporated
5500 Cenex Drive
Inver Grove Heights, MN 55077-1733 are the owner/operator of the facility.

III. WORK TO BE PERFORMED

A. **RESPONDENT IS HEREBY ORDERED** to complete the tasks described below within the dates specified and in accordance with the National Contingency Plan, 40 CFR Part 300, and any appropriate area contingency plan, and any applicable §311(j) facility response plan.

B. IMMEDIATE STABILIZATION AND MITIGATION ACTIONS

See attached Statement of Work

C. REMOVAL ACTION

PS Within 7 days from the date this Order is signed by EPA, Respondent(s) shall develop and submit to EPA for approval, a Work Plan and schedule for completing the tasks described below. Respondent(s) shall begin work within 1 days of EPA approval of the Work Plan. The Work Plan shall include the following tasks:

See attached Statement of Work

PS Within 7 days from the date this Order is signed by EPA, Respondent(s) shall develop and submit to EPA for approval, a Sampling Plan and schedule for sampling. Respondent(s) shall implement the Sampling Plan within 1 days of EPA approval. The Sampling Plan must satisfy the following requirements as defined in "Emergency Response Program Generic Quality Assurance Project Plan", March 11, 1999, URS Operating Services.

D. REPORTING REQUIREMENTS

PS Respondent(s) shall prepare and submit to the On-Scene Coordinator the following reports:

- PS Weekly Progress Reports due on Monday, 12 noon
- PS Monthly Progress Reports due on the 7th of the following month
- PS Final Completion Report due 30days after the completion of the Removal Action

E. OTHER REQUIREMENTS

PS Respondent shall designate a project manager who will direct CHS Inc.'s on site resources responding pursuant to this Order. All directions undertaken pursuant to this Order will be issued through the EPA On Scene Coordinator, Peter Stevenson.

IV. RESERVATION OF RIGHTS AND PENALTIES

- A. This Order does not preclude EPA from taking any actions authorized by CWA, the National Contingency Plan, or any other law. EPA reserves the right to direct all activities and to comment on and direct changes to deliverables, off-site shipping and disposal, and all other matters.
- B. Respondent shall notify EPA of any response actions it takes as to this discharge that are in addition to those described in this Order.
- C. Violation of any term of this ORDER may subject Respondents to an administrative civil penalty of up to \$27,500 per day of violation or an amount up to three times the costs incurred by the Oil Spill Liability Trust Fund as a result of such failure. (Section 311(b)(7)(B) of the Clean Water Act, 33 U.S.C. § 1321(b)(7)(B) as amended by the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 et seq.)

V. EFFECTIVE DATE

The effective date of this ORDER shall be the date of the receipt of this Order by the Respondents.

Robert Stevenson Nov 8, 2004
On-Scene Coordinator Date

Received by _____
Representing Respondent Date

Statement of Work

Roadside Ditch

- Construct 4 underflow catchment basins
- Clean up fuel residual, replace adsorbant pads as necessary

North Fork Snake River

- Locate downstream boom locations/calm water (in anticipation of spring runoff)
- Boom spring below lower A-Basin entrance (above maintenance shop)
- Place 2 booms on the North Fork Snake River, one just below the outfall of the upper french drain
- Boom sedimentation pond at the parking lot (lower french drain)

Visual Monitoring

- Check for fuel at roadside ditch, french drain outfalls, boom locations, the spring below lower A-Basin entrance, and at the upper old road at clearing daily until fuel stops flowing and/or until snow covered. After that, perform visual checks as directed

Install Monitoring Wells

- Install 4 monitoring wells as soon as possible at locations identified on Nov. 7, 2004

Upper French Drain Fuel/Water Collection

- Place 4" or adequately sized pipe/hose from the upper french drain to the lower sedimentation pond. Add connector to french drain to facilitate later hook up if french drain produces fuel.

Tanker Location/Wreck Site

- Conduct slope stabilization/restoration activities as directed by US Forest Service
- Truck debris removal

January to April Monitoring (Under Snow)

- Check Monitoring Wells, seep at slope along road (and other seeps that may appear), and french drain outfalls bi-weekly or as necessary
- Inspect/protect underflow dams as necessary

Equipment Placement

- Stage boom, adsorbant pads, and one drum at A-Basin Sheds

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EMERGENCY ADMINISTRATIVE ORDER** in the matter of **CHS INCORPORATED U.S. 6 DIESEL SPILL, DOCKET NO.: CWA-08-2005-0002** was filed with the Regional Hearing Clerk on November 8, 2004.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Michael Risner, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on November 12, 2004 to:

CHS Inc.
5500 Cenex Drive
Inver Grove Heights, MN 55077-1733

And

Commander
U. S. Coast Guard
1430 A Kristina Way
Chesapeake, VA 23326

November 12, 2004



Tina Artemis
Regional Hearing Clerk

